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IN THE
COURT OF APPEALS OF INDIANA

PATRICK HOLTSCLAW,   )
)
    Appellant-Defendant,   )
)
        vs.   )   No. 49A04-0712-CR-716
)
STATE OF INDIANA,   )
)
    Appellee-Plaintiff.   )

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Louis F. Rosenberg, Magistrate
Cause No. 49F10-0705-CM-88519

July 11, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Patrick Holtsclaw appeals his conviction of battery.[1] Holtsclaw raises one issue on appeal: whether the State's evidence was sufficient to prove the gun was not fired accidentally. We affirm.

FACTS AND PROCEDURAL HISTORY

On May 21, 2007, Holtsclaw was playing with a BB gun and socializing with Carlos, the owner of the BB gun, and several others. Some boys, including the fourteen-year-old victim, were skateboarding in the general area.

The victim and his friends approached Holtsclaw and his friends to see what they were doing. Holtsclaw asked the victim if he could shoot him with the BB gun. The victim initially ignored the question and began to leave. Holtsclaw repeatedly asked the victim if he could shoot him. The victim asked Holtsclaw not to shoot him and told Holtsclaw he has a heart condition. As the victim began to leave, he looked over his shoulder and saw Holtsclaw shoot. The BB struck the victim in the center of his back causing a red mark and a welt. The victim and a witness called the police. After assessing the victim and taking his statement, the officer arrested Holtsclaw.

Holtsclaw was charged with battery and criminal recklessness. He was convicted after a bench trial of battery; the criminal recklessness finding was merged into the battery conviction.

DISCUSSION AND DECISION

The State provided sufficient evidence Holtsclaw intended to commit battery. "Upon a challenge to the sufficiency of evidence to support a conviction, a reviewing court does not reweigh the evidence or judge the credibility of the witnesses, and respects

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[1] Ind. Code § 35-42-2-1.

'the [factfinder's] exclusive province to weigh conflicting evidence.'" *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005) (quoting *Alkhalidi v. State*, 753 N.E.2d 625, 627 (Ind. 2001)). We must affirm "if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt." *Id*. at 126.

"A person who knowingly or intentionally touches another person in a rude, insolent, or angry manner commits battery." Ind. Code § 35-42-2-1. Holtsclaw argues the State did not prove he acted intentionally. "A person engages in conduct 'intentionally' if, when he engages in the conduct, it is his conscious objective to do so." Ind. Code § 35-41-2-2(a). "Intent is a mental function." *Lush v. State*, 783 N.E.2d 1191, 1196 (Ind. Ct. App. 2003). "Absent an admission by the defendant, it must be determined from a consideration of the defendant's conduct and the natural and usual consequences thereof." *Id*.

Holtsclaw's actions and statements prior to the shooting demonstrate he acted intentionally. Holtsclaw asked the victim multiple times if he could shoot him. He asked the victim to stop moving so he could shoot him. Holtsclaw shot the victim in the center of his back. Holtsclaw argues the position of the BB gun at the time of the shooting should have created reasonable doubt about whether he intended to shoot the victim. Holtsclaw invites us to reweigh the evidence, which we may not do. *See McHenry*, 820 N.E.2d at 126.

The judgment of the trial court is affirmed.

Affirmed.

VAIDIK, J., and MATHIAS, J., concur.